O. Pub. Trusts

File No. Registration /45

Legal Department

A **BRANCH**

Subject:—

Opinions Under the

Bombay Pubic Trusts

Registration Act 1935

(P1 A/E)

O Pub. Trusts

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C O N T E N T S.

Legal Department File No. C Pub. Trusts.Registration/1945.

Sr. No.	Compilation No.	Subject.	Pages. &
		Opinions under the Public Trusts Registration Act, 1935.	
1)	O.No. 2701/7-4-45.	Sec. 14. Question whether casual gifts and donations should be excluded or not from the license while calculating the contribution to the P.T. A. Fund.	1-4.
2)	O.No. 5119/12-7-45.	Question whether there is any legal objection to bringing R.L.A.'s opinion to Mr. Mehta's notice and requesting him to revise his order accordingly after notice to the parties concerned so that those who feel aggrieved by the revised order may challenge. The levy of contribution by a regular suit.	5-6.

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Office of the P.I.T.

The Registrar, Public Trusts, Kaira District in his judgment at page 3 ante has held that casual gifts and donations being not "the gross income of the public trust" are not liable to contributions under section 14 of the Bombay Public Trusts Registration Act, 1935. Revenue Department consulted the Chief Judge, Small Cause Court, Bombay, about the practice followed in connection with the levy of contributions in such cases. In his endorsement dated 19-1-1945 the Chief Judge has stated: "This Court has been levying a contribution on all gifts and donations to the public trusts governed by the Bombay Public Trusts Registration Act, exempting only those donations given or offerings made with a specific direction that they should form the corpus of the public trust in accordance with the Government notification No. 4792/33 dated 2-4-1940.

As regards the Parsi Public Trusts it was formerly the practice of this court to levy a contribution on all gifts and donations made to such trusts. On 27-7-1942 however Judge Lalkaka in an application made by the Parsi Lachari Trust, Register No. 185 delivered judgment holding voluntary donations or gifts were exempt from the levy of a contribution. Since that date no contribution has been recovered by this Court on donations or gifts to Parsi Public Trusts.

As regards wakfs governed by the Musalman Wakf Act it was formerly the practice of this Court to levy a contribution on all gifts and donations made to such wakfs. The question was however raised in 1942 before the late chief Judge Sharmarao B. in an application in Wakf Register No. 18 of 1927.

Mr. Indarnarayan delivered judgment on 10-12-1942 hold — ing that all donations and gifts whether casual recurring or other-wise were exempt from the levy of a contribution to the wakf fund. Since than no contribution has been levied on any donations and gifts to the Wakfs."

Revenue Department considers that as the Parsi Public Trusts Registration Act and the Bombay Public Trusts Registration Act has been framed on the same lines there seems no objection to the casual gifts and donations made to the Public Trusts governed by the Bombay Public Trusts Registration Act being exempt from the levy of contribution to the Public Trusts Administration Fund as is done in the case of those made to Parsi Public Trusts. The P.L.A.- is requested to advise whether the view is correct.

It is true that the Bombay Public Trusts Registration Act, 1935, and the Parsi Public Trusts Registration Act, 1935, are similar in terms and the provisions of the Acts and the Rules thereunder in respect of the levy of contribution on the gross annual income of the trust are identical; but by Government Notification (Revenue Department)No. 4792/dated the 2nd April 1940 an Explanation was added to rule 18 of the Bombay Public Trusts RegistrationRules, 1937, whereby casual donations and gifts have been rendered liable to contribution unless they were to form part of the corpus of the Public Trust property. Similar Explanation was not added to rule 18 of the Parsi Public Trusts Registration Rules, 1936, notwithstanding the suggestion made by the Chief Judge, Small Cause Court, Bombay (see p.1341 of P.D. file No. 4792/33 pt. III). The absence of such explanation is perhaps responsible for the view taken by Judge Lalkaka in 1942.

R.D.'s attention is invited to P.L.A.'s opinion

No. 2220 dated 29-2-1940 (at p.457 of R.D file No. 4792/33, Part III) where the question whether the expression "the gross annual income" in the Bombay Public Trusts Registration Act includes the casual gifts and donations was ~~reconsidered~~ considered. P.L.A. does not see sufficient reason to depart from that opinion. If Government does not want gifts to be exempted from contribution, one course to follow would be to add an Explanation to ~~the~~ rule 18 of the Bombay Parsi Public Trust Registration Rules on the lines of that added to rule 18 of the Bombay Public Trust Registration Rules and to issue instructions to levy contributions on casual gifts and donations under both Acts and await further developments.

K/- P.N.K.

6/4/45.

Remembrancer of Legal Affairs.

U.O. to R.D. No. 2701 dated 7th April 1945.

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Office of the F.L.A.

Mr. M.T. Mehta in passing the order at page 3 ante did not act as First Class sub-Judge but as Registrar appointed under section 4 of the Bombay Public Trusts Registration Act, 1935. Consequently there is no legal objection to bringing the F.L.A.'s opinion No. 2700 dated the 7th April 1945, to Mr. Mehta's notice and requesting him to revise his order accordingly after due notice to the parties concerned, so that those who feel aggrived by the revised order may challenge the levy of contribution by a regular suit.

Sd/- P.N.M.

11/7/45.

Remembrancer of Legal Affairs.

U.O. to T.D. No. 5119 dated the 12th July 1945.

N.V.D.
10/7
4c.